

REMARKS

A. The Section 103 Rejections

Claims 1, 5-9, 13-18 and 22-25 were once again rejected under 35 U.S.C. § 103(a) based on U.S. Patent Application Publication No. 2005/0169222 to Ayyagari ("Ayyagari") in view of U.S. Patent Application Publication No. 2006/0039281 to Benveniste ("Benveniste") and U.S. Patent No. 6,504,837 to Menzel ("Menzel"). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Claims 1, 9 and 18 (and through their dependencies, so too the remaining claims) include the feature of assigning one or more CFP divided slots to an identified access point based on the number of users associated with the access point and to *maximize a lower bound of a slot-to-user ratio*.

In the Office Action the Examiner acknowledges that neither Ayyagari nor Benveniste discloses or suggests this assignment feature. To make up for this deficiency the Examiner relies on Menzel.

The Examiner once again refers the Applicants to column 4, line 64 to column 5, line 50 of Menzel in support of the position that Menzel discloses a slot assignment feature that takes into consideration the maximization of a lower bound of a slot-to-user ratio. However, Menzel does not disclose or suggest such a feature.

Instead, Menzel appears to set forth a method whereby a base station

can determine which time slots it can, or cannot, transmit during when time slots are in use by other base stations. Further, Menzel's general statement that its time slot allocation is "load-dependent" reveals little to one skilled in the art. Said another way, there is nothing in Menzel to suggest to the skilled artisan that its allocation methodologies include consideration of a slot-to-user ratio, much less the maximization of a lower bound of such a ratio as in the claims of the present invention.

In the Final Office Action the Examiner appears to take the position that because the phrase "maximization of a lower bound of a slot-to-user ratio" in the independent claims is not defined in the claims this phrase can be interpreted in any way the Examiner deems appropriate. This is incorrect.

First, there is no need to define a phrase in a claim when that phrase is sufficiently supported by the specification and/or when the words of the phrase can be readily understood by those skilled in the art. That is the case here so there is no need to insert a definition.

Further, the Examiner must have some understanding of the phrase because the Examiner was able to read the claims and identify possible prior art. Thus, rather than be an instance where it is necessary to insert a definition to understand a phrase, the present rejection represents the impermissible interpretation of a phrase in a claim.

More specifically, while Examiners may interpret phrases in a claim

broadly, any interpretation must be consistent with the specification, *In re Hyatt*, 211 F.3d 1367, 1373, 54 USPQ2d, 1664, 1667 (Fed. Cir. 2000). Here, the Examiner's interpretation is impermissible because it is inconsistent to interpret the phrase "maximization of a lower bound of a slot-to-user ratio" in the claims as meaning some generalized, load-dependent time slot allocation set forth in Menzel. Nowhere in the instant specification do the Applicants describe the maximization of a lower bound of a slot-to-user ratio as including Menzel's load-dependent time slot allocation. To conclude otherwise, as the Examiner has done, is impermissible.

Accordingly, because neither Ayyagari, Benveniste nor Menzel taking separately or in combination disclose or suggest the assignment of one or more of divided slots to an identified access point based on the number of users associated with the access point and to maximize a lower bound of a slot-to-user ratio, the Applicants respectfully submit that the subject matter of claims 1, 5-9, 13-18 and 22-25 would not have been obvious to one skilled in the art at the time the present application was filed upon reading the disclosures of Ayyagari, Benveniste and Menzel. Accordingly, Applicants respectfully request withdrawal of the rejections and allowance of claims 1, 5-9, 13-18 and 22-25.

B. Entry of Request for Reconsideration

Entry of this Request for Reconsideration ("Request") is solicited because the Request: (a) places the application in condition for allowance for the

reasons discussed herein; (b) does not raise any new issues requiring further search and/or consideration; (c) does not present any additional claims without canceling the corresponding number of finally rejected claims; and (d) places the application in better form for appeal, if an appeal is necessary.

Should there be any other outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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